

11 Discipline of Practitioners

11.1 Practitioner Discipline Generally

The Board has the authority to impose disciplinary sanctions upon attorneys and accredited representatives who violate rules of professional conduct in practice before the Board, the Immigration Courts, and the Department of Homeland Security (DHS). 8 C.F.R. §§ 1003.1(d)(2)(iii), 1003.1(d)(5), 1003.101-106; 1292.3. See also *Matter of Gadda*, 23 I&N Dec. 645 (BIA 2003).

11.2 Definition of Practitioner

For purposes of this Chapter, the term “practitioner” is defined as an attorney or accredited representative, as defined in 8 C.F.R. § 1001.1(f), (j).

11.3 Jurisdiction

(a) Practitioners. — The Board is authorized to discipline any practitioner if the Board finds it to be in the public interest to do so. 8 C.F.R. §§ 1003.101(a), 1292.3(a). Pursuant to regulations, it is in the public interest to discipline any practitioner who has engaged in criminal, unethical, or unprofessional conduct or in frivolous behavior. 8 C.F.R. §§ 1003.101(a), 1003.102, 1292.3(b).

(b) DHS attorneys. — The Board’s disciplinary authority does not extend to attorneys who represent DHS.

(c) Immigration Judges. — The Board’s disciplinary authority does not extend to Immigration Judges. The conduct of Immigration Judges falls under the jurisdiction of the Department of Justice’s Office of Professional Responsibility. 8 C.F.R. § 1003.109.

(d) Immigration specialists. — The Board does not have authority to discipline individuals such as “immigration specialists,” “visa consultants,” “notarios,” “asesorios,” and other individuals who engage in the unauthorized practice of law. However, the Board has the authority to discipline practitioners who assist in the unauthorized practice of law. 8 C.F.R. § 1003.102(m). The Board encourages anyone harmed by the unauthorized practice of law to report it to the appropriate law enforcement, consumer protection, and other authorities.

11.4 Conduct

The following conduct may result in discipline by the Board:

- frivolous behavior, as defined in 8 C.F.R. § 1003.102(j) and discussed at 8 C.F.R. § 1003.1(d)(2)(iii)
- ineffective assistance of counsel as provided in 8 C.F.R. § 1003.102(k)
- misconduct resulting in disbarment from, suspension by, or resignation with an admission of misconduct from a state or federal licensing authority
- conviction of a serious crime
- a false statement of material fact or law made knowingly or with reckless disregard
- false certification of a copy of a document made knowingly or with reckless disregard
- assisting the unauthorized practice of law
- grossly excessive fees
- bribery, coercion, or an attempt at either, with the intention of affecting the outcome of an immigration case
- improper solicitation of clients or using “runners”
- misrepresenting qualifications or services
- repeated failure to appear for scheduled hearings in a timely manner without good cause
- courtroom conduct that would constitute contempt of court in a judicial proceeding

See 8 C.F.R. § 1003.102. This list is not exhaustive or exclusive, and other grounds for discipline may be identified by the Board. 8 C.F.R. § 1003.102.

11.5 Complaints

(a) Who may file. — Anyone may file a complaint against a practitioner, including aggrieved clients, adjudicators, DHS personnel, and other practitioners. 8 C.F.R. § 1003.104(a)(1).

(b) What to file. — Complaints must be submitted *in writing* on the Immigration Practitioner Complaint Form (Form EOIR-44), which can be downloaded from the Internet. See Chapter 12.2(b) (Obtaining forms), Appendix E (Forms). The complaint form provides important information about the complaint process, confidentiality, and the kinds of misconduct that the Board can discipline. Complaints should be specific and as detailed as possible, providing supporting documentation when it is available.

(c) Where to file. —

(i) Misconduct before Board or Immigration Judge. — Complaints alleging misconduct before the Board or an Immigration Court are filed with the Office of General Counsel of the Executive Office for Immigration Review (EOIR). 8 C.F.R. § 1003.104(a)(1). The completed form and supporting documents should be sent to:

Office of General Counsel
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

Attn: Bar Counsel

EOIR's Office of General Counsel decides whether or not to initiate disciplinary proceedings. 8 C.F.R. § 1003.104(b).

(ii) Misconduct before DHS. — Complaints involving such conduct before DHS are to be filed with the appropriate DHS Office of the Principle Legal Advisor. 8 C.F.R. §§ 1003.104(a)(2); 1292.3(d).

(d) When to file. — Complaints based on ineffective assistance of counsel must be filed within one year of a finding of ineffective assistance of counsel by the Board or the Immigration Court. 8 C.F.R. § 1003.102(k).

11.6 Duty to Report

Any attorney or accredited representative who practices before the Board, the Immigration Courts, or DHS has an affirmative duty to report whenever he or she:

- has been found guilty of, or pled guilty or *nolo contendere* to, a serious crime (as defined in 8 C.F.R. § 1003.102(h)), or
- has been suspended or disbarred, or has resigned with an admission of misconduct

8 C.F.R. §§ 1003.103(c), 1292.3(c)(4). The practitioner must report the misconduct, criminal conviction, or discipline both to the EOIR Office of General Counsel and to the appropriate DHS Office of the Principal Legal Advisor within 30 days of the issuance of the relevant initial order. The duty applies even if an appeal of the conviction or discipline is pending.

11.7 Procedure

The regulations provide the procedures for filing complaints and imposing sanctions for misconduct before the Board and the Immigration Courts. See 8 C.F.R. §§ 1003.101 et seq. The regulations also contain procedures for filing complaints regarding misconduct before DHS. 8 C.F.R. § 1292.3.

(a) Initiation of Proceedings. —

(i) Notice of Intent to Discipline. — Disciplinary proceedings begin when the EOIR Office of General Counsel files a Notice of Intent to Discipline with the Board and serves a copy on the practitioner. The Notice contains a statement of the charge(s) against the practitioner, a copy of the inquiry report (if any), proposed disciplinary sanctions, the procedure for filing an answer to the Notice or requesting a hearing, and the contact information for the Board. 8 C.F.R. § 1003.105(a).

(ii) Petition for Immediate Suspension. — When the Notice of Intent to Discipline concerns an attorney who has either been convicted of a serious crime or is subject to suspension or disbarment by a state or federal licensing authority, the Office of General Counsel petitions for the immediate suspension of that attorney. 8 C.F.R. § 1003.103(a)(1).

Usually filed in conjunction with the Notice of Intent to Discipline, the petition for immediate suspension seeks the practitioner's immediate suspension from practice before

the Board and the Immigration Courts. 8 C.F.R. § 1003.103(a)(1). DHS may ask that the practitioner be similarly suspended from practice before DHS.

The regulations direct that, upon the filing of a petition for immediate suspension, the Board will suspend the respondent for as long as disciplinary proceedings are pending. 8 C.F.R. § 1003.103(a)(2). The regulations permit the immediate suspension to be set aside when the Board deems it in the interest of justice to do so. 8 C.F.R. § 1003.103(a)(2). The usual hardships that accompany a suspension from practice (e.g., loss of income, duty to complete pending cases) are generally not sufficient to set aside an immediate suspension order.

(b) Response. — The subject of a Notice of Intent to Discipline has 30 days from the date of service to file a written answer to the Notice and to request a hearing. 8 C.F.R. § 1003.105(c)(1). An answer is deemed filed at the time it is *received* by the Board. See Chapter 3.1(b) (Must be “timely”). The answer should be served on both the EOIR Office of General Counsel and the appropriate DHS Office of Principal Legal Advisor. The time in which to file an answer may be extended for good cause shown through the filing of a motion no later than 3 working days *before* the filing deadline. 8 C.F.R. § 1003.105(c)(1). Second extension requests are rarely granted.

(i) Timely answer. — If an answer is timely received by the Board, the matter will be referred to an appropriate adjudicator, generally an Immigration Judge, to conduct a disciplinary hearing. 8 C.F.R. § 1003.106. The answer must specifically admit or deny each of the allegations in the Notice of Intent to Discipline. Each allegation not denied is deemed admitted. 8 C.F.R. § 1003.105(c)(2).

If the practitioner wishes to have a hearing, the request for a hearing must be contained in the written answer. Otherwise, the opportunity to request a hearing will be deemed waived. 8 C.F.R. § 1003.105(c)(3).

(ii) No answer or untimely answer. — If the Board does not receive a timely answer, the failure to answer is deemed an admission of the allegations in the Notice of Intent to Discipline, and the practitioner is thereafter precluded from requesting a hearing on the matter. 8 C.F.R. § 1003.105(d). The regulations require the Board to enter a default order imposing the discipline recommended by the EOIR Office of General Counsel and the DHS Office of Principal Legal Advisor, absent the presence of special considerations. 8 C.F.R. § 1003.105(d)(2).

A practitioner subject to a default order may move to set aside that order, provided that the motion is filed within 15 days of the date of service of the default order and that his or her failure to answer was due to exceptional circumstances beyond the control of the

practitioner (e.g., the attorney's serious illness, death of an immediate relative). 8 C.F.R. § 1003.105(d)(2).

(c) Hearing. — If a practitioner timely requests a hearing, the record is forwarded to an Immigration Judge or other appropriate adjudicator to conduct a disciplinary proceeding, which is described at 8 C.F.R. § 1003.106. For the most part, disciplinary hearings will be conducted in the same manner as immigration proceedings. 8 C.F.R. § 1003.106. However, the Immigration Judge presiding over the disciplinary proceeding will not be one before whom the practitioner regularly appears. 8 C.F.R. § 1003.106(a)(1)(i).

(d) Appeals. — The regulations provide that the Board may entertain an appeal filed by a practitioner wishing to challenge the adjudicator's disciplinary ruling. 8 C.F.R. § 1003.106(c). The appeal must be received by the Board within 30 days of the oral decision or, if no oral decision was rendered, 30 days of the date of mailing of the written decision. The proper form for filing a practitioner discipline appeal is the Notice of Appeal (Form EOIR-45), which can be downloaded from the Internet. See Chapter 12.2(b) (Obtaining forms), Appendix E (Forms). (This form is specific to disciplinary proceedings and is different from the Notices of Appeal in other types of proceedings. See Appendix E (Forms).) The parties must comply with all of the other standard provisions for filing appeals with the Board. 8 C.F.R. § 1003.106(c). See Chapter 4 (Appeals of Immigration Judge Decisions).

(e) Motions. — As with most motions in immigration proceedings, motions should be filed with the adjudicator who has jurisdiction over the case.

(i) Prior to the entry of a default order or a timely request for a hearing. — In this instance, motions should be filed with the Board.

(ii) After a timely response has been made. — In this instance, motions should be filed with the Immigration Judge, unless an appeal to the Board has been taken.

(iii) If a default order has been entered. — In this instance, motions should be filed with the Board.

11.8 Sanctions

The Board is authorized to impose a broad range of sanctions, including "expulsion" (permanent suspension) from immigration practice, public or private censure, and other sanctions deemed appropriate by the Board. 8 C.F.R. § 1003.101(a). The Board may even increase the level of disciplinary sanction. *Matter of Gadda*, 23 I&N Dec. 645 (BIA 2003). When a practitioner has

been expelled or suspended, that information is made available to the public on the EOIR website, at the Board, and at the Immigration Courts. See Chapter 11.9 (Confidentiality).

11.9 Confidentiality

The regulations discuss confidentiality and public disclosure at the various stages of disciplinary proceedings. See 8 C.F.R. § 1003.108. As a general rule, action taken on a Notice of Intent to Discipline may be disclosed to the public. 8 C.F.R. § 1003.108(c).

11.10 Effect on Cases before the Board

(a) *Duty to advise clients.* — A practitioner who is disciplined is obligated to advise all clients with a case pending before either the Board or an Immigration Court that he or she has been disciplined by the Board.

(b) *Pending cases deemed unrepresented.* — Once a practitioner has been disciplined by the Board and is currently not authorized to practice before the Board and the Immigration Courts, the Board will deem that practitioner's pending cases to be unrepresented. Filings that are submitted after a practitioner has been expelled or suspended will be rejected and returned to the party whenever possible. If the practitioner is later reinstated by the Board, he or she must file a new Notice of Entry of Appearance (Form EOIR-27) in every case, even if he or she previously represented that party. See Chapter 11.12(c) (Cases pending at the time of reinstatement).

(c) *Ineffective assistance of counsel.* — The imposition of discipline on an attorney does not constitute *per se* evidence of ineffective assistance of counsel in any case formerly represented by that attorney.

(d) *Filing deadlines.* — An order of practitioner discipline does not automatically excuse parties from meeting any applicable filing deadlines.

11.11 List of Suspended and Expelled Attorneys

A list of practitioners who have been suspended or expelled from immigration practice appears at www.usdoj.gov/eoir. The list is updated periodically. Copies are also posted at the Board and in the Immigration Courts.

11.12 Reinstatement

(a) Expiration of suspension. — When a period of suspension has run, reinstatement is not automatic. 8 C.F.R. § 1003.107(a). An practitioner who has been suspended from immigration practice and who wishes to be reinstated must:

- file a motion with the Board requesting to be reinstated
- show that he or she can meet the definition of “attorney” set forth in 8 C.F.R. § 1001.1(f) (or § 1001.1(j) if an “accredited representative”)

Certain attorneys must meet additional criteria to be reinstated. See subsection (b), below.

(b) Petition for reinstatement. — A practitioner who has been expelled or has been suspended for a year or more may seek reinstatement with the Board if he or she:

- petitions after one year or one-half of the term of suspension has expired, whichever is greater
- can meet the regulatory definition in 8 C.F.R. § 1001.1(f) or § 1001.1(j)
- can demonstrate by clear, unequivocal, and convincing evidence that he or she possesses the moral and professional qualifications required to return to immigration practice
- can show that reinstatement will not be detrimental to the administration of justice

8 C.F.R. § 1003.107(b)(1). Failure to meet any one of these criteria will result in the request for reinstatement being denied. Once a request for reinstatement is denied, the attorney may not seek reinstatement for another full year. 8 C.F.R. § 1003.107(b)(2). The Board may, in its discretion, hold a hearing to determine if the attorney meets all the regulatory requirements for reinstatement.

All requests for reinstatement must be served on the EOIR Office of General Counsel and the appropriate DHS Office of Principal Legal Advisor. 8 C.F.R. § 1003.107(b)(1).

(c) Cases pending at the time of reinstatement. — Suspension or expulsion by the Board terminates representation. A practitioner reinstated to immigration practice by the Board who wishes to represent cases before the Board or the Immigration Courts must enter a new

appearance in each case, *even if* he or she was the attorney of record at the time that discipline was imposed. The practitioner should include proof of reinstatement with each new appearance. See Chapter 2.3(c) (Appearances).